

UNITED STATES DISTRICT COURT

WILMINGTON, DE

CASE NO. 06-244-SLR

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2006 NOV - 1 AM 9:36

Joan T. Kloth

PLAINTIFF

vs.

Southern Christian University; (a.k.a. Regions University)
Board of Directors; et.al

DEFENDANTS

RESPONSE TO RESPONSIVE BRIEF OF DEFENDANTS IN OPPOSITION TO THE
MOTION OF PLAINTIFF FOR SUMMARY JUDGMENT

* * * * *

The Plaintiff, Joan Kloth ("Appellant"), PRO SE, and hereby moves with an answer under Federal Civil Rule 55(c) with a response to the Defendants, Southern Christian University, (now known as "Regions University"), et.al Motion to Dismiss Plaintiffs Summary/Default Judgment Motion and respectfully states as follows:

1. Defendant has still as of the date of this filing, not responded with the court required answer to the original complaint. Defendant has only filed on October 20th, 2006 for a Motion for Dismissal.

2. The Plaintiff filed her case on April 20th, 2006. It was entered in on June 5, 2006 by the courts, and served upon the defendants by a Sheriff on July 28th. As per Federal Civil Rule 55, Defendant had 20-days, until August 17th to answer the original complaint. (Exhibit A)

3. Defendant has not provided any reasonable claims for their negligence in filing within a timely manner.

Case Law 1: *Darrell F. Sanders v. Jay M. Cseh, Heritage Mechanical Services d/b/a*

Hutchinson Plumbing Heating Cooling LLC, Heritage Mechanical Services, and Hutchinson Plumbing Heating Cooling, LLC. C.A. No. 05C-07-011-JRJ. Courts found that Defendant had not proven excusable neglect for failing to answer the complaint and ruled in the favor of the Plaintiff to not allow for dismissal. Case Law below is cited in this case.

Case Law 2: *Mendiola v. State Farm Mutual Automobile Insurance Co. C.A. No.: 05C-06-159 JRJ.* In this case, the judge found that State Farm was solely responsible for not answering the original Complaint because of their failure to hire and properly train their employees who sorted their mail and thus the courts did not accept this as excusable neglect.

Case Law 3: *STONINGTON PARTNERS, INC., et. al., Plaintiff, v. LERNOUT & HAUSPIE SPEECH PRODUCTS, N.V., et al., Defendants. C.A. No. 18524-NC.* The courts ruled that the law is clear on how a default judgment can be entered and that the Defendants clearly were at fault for not responding in the allotted legal time of 20 days stating the applicable principle that governs the entry of a default judgment is easily stated. A default judgment may be entered when a party against whom a judgment is sought has failed to appear, plead, or otherwise defend, where the party entitled to the default judgment applies for it. n12.”


4. The Amendment to the original case by the Plaintiff on or about October 18, 2006, was a clarification to place the responsibility appropriately upon the Defendant who breached the implied contract to provide a complete education to the Plaintiff. This Clarification will insure that when the courts find in the Plaintiff's favor and the Defendant fails to abide by this order or continually tries to appeal or otherwise impede the courts decision, that the Plaintiff is legally protected from retribution by the financial institutions and organizations that oversee and handle her student loans.

5. The Defendants claims that Personal Jurisdiction is the primary issue and thus Plaintiff's lawsuit should be dismissed ignores the fact that the Defendant failed to answer the original lawsuit in a timely manner.

WHEREFORE, it be known that the Defendant has ignored Federal Civil Rule 55 to respond to the Complaint within 20 days thus not responding in a timely manner. The Defendant waited until the Plaintiff filed a Motion for Summary Judgment to respond. This was 66 days past the 20-day period to file a Response to the original Complaint. On Oct. 20, 2006, 86 days after being served with the Original Complaint, the Defendant finally filed a Motion to Dismiss for Lack of Jurisdiction, and filed a Responsive Brief to the Plaintiffs Motion for Summary Judgment. The Plaintiff respectfully requests that the Court deny Defendant's frivolous Opposition against the Summary/Default Judgment as the Defendant clearly is well beyond the acceptable time frame to answer the Original Complaint and thus in violation of Federal Civil Rule 55. The Plaintiff, therefore, respectfully requests the Courts to rule in favor of the Plaintiff for Summary/Default Judgment and grant such relief as is set out herein. Plaintiff requests \$2,058,000 and to include the amended complaint filed on October 18, 2006 for the defendant to be solely responsible for all of the plaintiffs student loans affected by the Defendants' negligence and breach of implied contract.

Dated: November 1, 2006

Respectfully submitted:



JOANT. KLOTH
37 Winter Haven Drive, Apt. 1
Newark, DE 19702
Pro-Se

EXHIBIT A

**U.S. Department of Justice
United States Marshals Service**

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

| | | |
|---|---|--|
| PLAINTIFF Joan T. Kloth | | COURT CASE NUMBER 06-244-568 |
| DEFENDANT Southern Christian University | | TYPE OF PROCESS Complaint |
| SERVE ➔ | NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN SCU | |
| | ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 1200 Taylor Ave. Montgomery, AL 36117-3553 | |
| AT | | |

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

Joan T. Kloth
37-01 Witterburg Rd.
Newark, DE 19702

| | |
|---|---|
| Number of process to be served with this Form - 285 | 1 |
| Number of parties to be served in this case | 2 |
| Check for service on U.S.A. | |

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

F04

F04

Signature of Attorney or other Originator requesting service on behalf of:

☒ PLAINTIFF
☐ DEFENDANT

TELEPHONE NUMBER

DATE

302-640-2626

6-5-06

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

| | | | | | |
|---|---------------|--------------------|-------------------|--|------|
| I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) | Total Process | District of Origin | District to Serve | Signature of Authorized USMS Deputy or Clerk | Date |
| | | No. 15 | No. 2 | | |

I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☒ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

Name and title of individual served (if not shown above)

Arleta Coston - Chief Accountant

Address (complete only if different than shown above)

☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.

Date of Service: 7/5/06 Time: 11:50 am

Signature of U.S. Marshal or Deputy

| | | | | | | |
|-------------|---|----------------|---------------|------------------|--------------------------------|------------------|
| Service Fee | Total Mileage Charges (including endeavors) | Forwarding Fee | Total Charges | Advance Deposits | Amount owed to U.S. Marshal or | Amount of Refund |
| 7-15.00 | 14.45 | 2.50 | 57.45 | | | |

REMARKS:

NOTE

**U.S. Department of Justice
United States Marshals Service**

PROCESS RECEIPT AND RETURN

See Instructions for "Service of Process by the U.S. Marshal" on the reverse of this form.

| | | |
|--|--|--|
| PLAINTIFF <u>Joan T. Koth</u> | | COURT CASE NUMBER <u>06-244-SLR</u> |
| DEFENDANT <u>Southern Christian University Board of Directors</u> | | TYPE OF PROCESS <u>Complaint</u> |
| SERVE ➡ | NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN <u>SCU Board of Directors</u> | |
| | ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) <u>100 Taylor Ave. Montgomery AL 36117-3553</u> | |
| AT | | |

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW:

| | |
|---|----------|
| Number of process to be served with this Form - 285 | <u>1</u> |
| Number of parties to be served in this case | <u>2</u> |
| Check for service on U.S.A. | |

Joan T. Koth
33-21 WILKES FARM RD
NEWARK, DE 19702

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available For Service):

| | | | |
|--|---|---|-----------------------|
| Signature of Attorney or other Originator requesting service on behalf of: <u>[Signature]</u> | <input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT | TELEPHONE NUMBER <u>302-690-2626</u> | DATE <u>6-5-06</u> |
|--|---|---|-----------------------|

SPACE BELOW FOR USE OF U.S. MARSHAL ONLY — DO NOT WRITE BELOW THIS LINE

| | | | | | |
|---|---------------|--------------------|-------------------|--|--|
| I acknowledge receipt for the total number of process indicated. (Sign only first USM 285 if more than one USM 285 is submitted) | Total Process | District of Origin | District to Serve | Signature of Authorized USMS Deputy or Clerk <u>[Signature]</u> | Date <u>7-13-06</u> <u>7/24/06</u> |
| | | No. <u>15</u> | No. <u>2</u> | | |

I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☒ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., shown at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above (See remarks below)

| | |
|---|---|
| Name and title of individual served (if not shown above) <u>Mr. [Signature] - Accountant</u> | <input type="checkbox"/> A person of suitable age and discretion then residing in the defendant's usual place of abode. |
| Address (complete only if different than shown above) | Date of Service <u>7/25/06</u> |
| | Time <u>11:30</u> am |
| Signature of U.S. Marshal or Deputy <u>[Signature]</u> | |

| | | | | | | |
|-------------------------------|---|-------------------------------|-------------------------------|------------------|--------------------------------|------------------|
| Service Fee <u>\$75.00</u> | Total Mileage Charges (including endeavors) <u>0</u> | Forwarding Fee <u>3.00</u> | Total Charges <u>53.40</u> | Advance Deposits | Amount owed to U.S. Marshal or | Amount of Refund |
|-------------------------------|---|-------------------------------|-------------------------------|------------------|--------------------------------|------------------|

REMARKS:

NOTE

UNITED STATES DISTRICT COURT
AND FOR THE DISTRICT OF DELAWARE

CASE NO. 06-244-SLR

Joan T. Kloth

PLAINTIFF

Vs.

Southern Christian University;
Board of Directors, et.al

DEFENDANTS

AFFIDAVIT OF SERVICE/CERTIFICATE OF SERVICE

STATE OF DELAWARE:



COUNTY OF NEW CASTLE:

SS,

BE IT REMEMBERED THAT on this the 1 day of November, 2006, I, Joan T. Kloth mailed, certified registered postage prepaid, a copy of the Rebuttal of Motion to Dismiss for Personal Jurisdiction and a Copy of the Response to the Response on Summary/Default Judgment to Kevin Goldstein, counsel for Southern Christian University, now known as Regions University and it's Board of Directors, et.al.

Service was made upon:
Kevin Goldstein and Michael Migliore
300 Delaware Ave, Suite 800
Wilmington, DE 19801

Certified Registered Mail No. 7006 0810 0001 7049 4649

 
Joan T. Kloth
Plaintiff, Pro-Se
37 Winter Haven Drive. Apt. 1
Newark, DE 19702
302-690-2626
302-454-1318

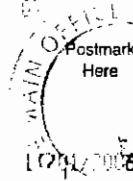
CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

WILMINGTON, DE 19801

| | | |
|---|----|--------|
| Postage | \$ | \$1.11 |
| Certified Fee | | \$2.40 |
| Return Receipt Fee (Endorsement Required) | | \$1.85 |
| Restricted Delivery Fee (Endorsement Required) | | \$1.00 |
| Total Postage & Fees | \$ | \$5.36 |



| | |
|------------------------------------|--------------------------|
| Sent To | Goldstein & Strawn et AL |
| Street, Apt. No., or PO Box No. | 300 Delaware Ave |
| City, State, ZIP+4 | Wilmington, DE 19801 |

PS Form 3800, June 2002

See Reverse for Instructions